IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPEAL NO. 704 OF 1991

The State of Maharashtra)
(Shri Mangesh krishna Gunadekar,)
age about 24 years, Occupation:)
Agriculturist, R/o Lavel).).. Appellant

Vs.

1. Salim Ibrahim Kaskar)
age 19 years, Resident of)
Chiplun Pag. Post Chiplun,)
Dist. Ratnagiri.)
2. Asharaf Alias Asalam Hasan Naik,)
age 24 years, R/o. Kamathe,)
Post. Chiplun, Dist. Ratnagiri.).. Respondents
(Org.Accused)

Ms.Shilpa V. Gajare, APP for the Appellant-State.
Shri N.V.Vachalekar for the Respondents.

CORAM: S.K.SHAH,J.
DATE : 29th November,2005

ORAL JUDGMENT :

1. This Appeal is filed by the State against the order of acquittal passed by the Judicial Magistrate, First Class, Khed, acquitting both the acused of the

offence punishable under Section 420 read with Section 34 of I.P.C.

2. Brief facts of the case were that the accused No.1 and complainant were acquainted with each other as they were employed in different companies which were adjacent to each other. The allegation of the prosecution is that Mangesh had chat with the accused No.1 who told the complainant Mangesh that the accused No.1's father was in foreign company and accused No.1 himself was doing the work of Passport and agency and that his father used to send Visas and asked the complainant whether anybody wanted to take passport. At that time, it is allegded that the complainant told the accused No.1 that he was serviving in a company and that his passport was ready but he was in need of visa. Thereupon, the accused No.1 told the complainant that he would ask his son to get the amount of Rs.18,000/- ready for the Visa of the complainant himself and his brother. Accordingly, the complainant collected the said amount for getting the Visa. It is further alleged that on 9.5.1984, the accused No.1 met the complainant and demanded from him the amount of Rs.4,000/- which the complainant paid in cash whereupon the accused No.1 passed receipt. 5 - 6 days later, the accused No.1 again demanded money. Since the complainant did not have cash, he handed

over one wrist watch worth Rs.250/- to the accused No.1. About 5 - 5 days later, again accused No.1 made a demand and at that time the complainant allegedly paid to the accused No.1 Rs.13,820/-. Accused No.1 later again demanded money and the complainant paid Rs.100/- for the passport of his brother Suresh. At that time, it was decided that the complainant and his brother should go to Mumbai on 24.8.1984 and accordingly both of them along with the accused No.1 left their village on 23.7.1984. It is further alleged that accused No.1 left the complainant and his brother saying that he would go to Bhendi Bazar and come again. However, the accused No.1 did not return. The complainant and his brother waited for accused No.1 for few days and returned to the village Lavel. After return to the Village, they learnt that the accused No.1 had collected Rs.200/- from the mother of complainant as also some ornaments for doing the work of getting passport. The ornaments were: one gold pair of earrings and one gold finger ring totally worth Rs.1,000/-. Since the accused No.1 did not arrange for the passport, the complainant suspected and therefore lodged the complaint to the police.

3. On having registered the complaint, the Investigation Officer, PSI, Shriram (PW-7) investigated the offence and after completing the

investigation, he filed charge-sheet in the Court of Judicial Magistrate, First Class, Khed.

4. Both the accused pleaded not guilty to the charge levelled against them. Their defence was total denial.

5. In all seven witnesses were examined by the prosecution. They were complainant - Mangesh (PW-1), Sunanda (PW-2), mother of the complainant, Manohar Lalajisheth (PW-3), seizure of gold from the accused, Anant Karekar (PW-4) to whom the gold ornaments were sold by the accused, Shashikant Patwardhan (PW-5), Uday Modak (PW.6) from whom the accusded NO.1 had purchased Rikshaw bearing No. MHD 3508 and the PSI (PW-7).

6. The learned trial Court acquitted the accused on the ground that there was absolutely no reason to involve the accused No.2 and that there were material contradiction in the evidence of the complainant and his complaint. The main ground for acquittal was that the prosecution failed to establish the main ingredients of accusdd No.1 having induced the complainant to part with the property with the dishonest intention. On this ground, the learned trial Court acquitted both the accused of the

charghes. The judgment of the trial Court is assailed in this Appeal. 7. The learned A.P.P. vehemently argued that the judgment of the trial Court was totally wrong and against the evidence. The learned Counsel for the appellant supported the judgment of the trial Court.

8. With the assitance of the learned A.P.P., I have gone through the evidence as also the judgment of the trial Court. At the outset, it should be mentioned that there is no material in the evidence of the PW-1 complainant to show that some time earlier the accused No.1 had told the complainant that accused No.1's father can manage about the Visa and there is no evidence which says that the accused No.1 asked him the amount of Rs.4,000/- and the complainant paid Rs.4,000/- to the accused No.1 by complainant's mother. The accused No.1 issued receipt for Rs.4,000/-. The evidence further shows that the accused No.1 did not give him the passport. The accused No.1 demanded Rs.13,820/- for Visa. Again the complainant paid that amount to the accused NO.1. The accused again demanded money. Therefore, the complainant says that he gave the Mangalsutra, gold ring and a wrist watch of Richoh company to the accused No.1 who issued receipt. The evidence further shows that accused NO.1 told him that the Visa will be

received soon. 9. The evidencd further shows that accused NO.1 had taken the complainant to his uncle's house at Bombay. The complainant states that the accused No.1 told him that he was going to aerodrome and went away and did not return. After waiting for 5 - 6 days, the complainant returned to their village. His evidence furhter shows that the accused did not return the money even after repeated demands. This is all the evidence. The learned trial Court has found number of material contradictions in the evidence of the complainant and the complaint which I need not repeat. Suffice it to say that the evidence of the complainant does not show that the accused No.1 had induced the complainant to pay. The evidence further silent about as to who wanted the passport or visa. The accused No.1 having disclosed to the complainanat that his father was abroad and he will arrange for visa. It is not proved in this case. That was in the form of information given by the accused No.1 to the complainant. The complainant's evidence did not show whether the complainant himself wanted the passport or visa or his brother wanted the passport or visa. The evidence is totally silent as to what transpired between the complainant and the accused No.1. The complainant failed to disclose for which the accused No.1 passed receipt. There is nothing to indicate that there was any inducement from the accused No.1.

It is undisputed fact that accused No.1 had taken money from the complainant. It is further admitted part that two civil suits are filed bythe complainant against accused No.1 for recovery of the amounts based on the receipts issued by the accused No.1. It is further undisputed that accused No.1 had admitted to have received the money from the complainant in those suits. The gist of ingredient of Section 420 as rightly pointed out by the trial Court is that there should dishonest inducement inducing a person to deliver property by disception. These ingredients are not established by the complainant as discussed above.

10. Therefore, I do not find any error in the judgment of the trial Court and consequently, there is no merit in the Appeal.

The Appeal is, therefore, dismissed.

(S.K.SHAH,J.)